IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2780 OF 1992

Sardar Sitalsingh Amarsingh ..Petitioner

versus

Smt. Dayawanti M. Lalchandani
& Anr. ..Respondents

Mr. D. K. Ghaisas for the Petitioner.
None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 19TH OCTOBER, 2006

ORAL ORDER :

1. Heard counsel for the Petitioner. Nobody appeared for the Respondents.

2. The petitioner is a tenant. Landlord - respondent had filed a suit against him before the Civil Judge, Junior Division, Ulhasnagar, vide R.C.S. No. 42 of 1979 for possession, arrears of rent and mesne profits in respect of tenement comprising of two rooms, kitchen, bathroom etc. as described in the plaint. The monthly rent was Rs.20/-. Case of the plaintiff was that the

defendant was irregular in payment of rent, therefore the notice dated 13.12.1978 was served upon the defendant who was in arrears of more than six months rent and the total amount due was Rs.560/-. He was also in arrears of permitted increases in respect of the taxes and water charges amounting to Rs.133/- during the aforesaid period. Another ground that was pressed for eviction was bonafide requirement and construction of compound wall without the consent of the landlord.

3. The tenant - petitioner contended that he has sent the rent by money orders but he denied the liability to pay the permitted increases of Rs.133/-. He also contended that rent of Rs.20/- was not standard rent, that the plaintiff was not paying the water charges and the defendant made the payment of water charges at Rs.80/- and that he was entitled for deduction for adjustment. The defendant denied that he was in arrears of rent from August 1976. He also alleged that he was not knowing the address of the plaintiff and hence could not send the rent to the plaintiff. Bue he again stated that he had sent the money order of Rs.560/- but that was refused initially but later on

accepted. The trial court in the background of the aforesaid, framed issues, parties led evidence and ultimately the suit came to be decreed. The tenant - petitioner filed an appeal before the Additional District Judge, Thane. The appeal also came to be dismissed by judgment and order dated 16.4.1992, and hence this petition.

4. Counsel for the petitioner made two submissions. Firstly, construction of compound wall around the suit premises did not amount to any kind of benefit to the tenant but it was benefit to the property of the landlord. Therefore, that could not be a ground against the tenant for eviction. He also contended that compound wall cannot be constructed stealthily or clandestinely. Construction was made in the presence and to the knowledge of the plaintiff. If it was illegal or without consent, the plaintiff could have prevented the defendant from making construction by filing a suit of injunction and since the plaintiff did not do any such thing, it should have been presumed that the compound wall was constructed without the consent of the plaintiff and it could have been accepted. However, the compromise between the

parties to which there will be a detailed reference mentions that tenant shall not make any additions or alteration without the written permission of the appellant. Admittedly the petitioner - tenant has no written permission with him.

5. The other submission made by the counsel for the petitioner was that the parties had filed consent terms in the earlier prcoeedings where standard rent was agreed to be Rs.20/- along with water charges, and, if this is so, then the tenant was not bound to pay enhanced water charges. He therefore contended that when it has come on record that soon after the demand notice, the petitioner sent Rs.560/- by money order and this money order was ultimately accepted by the plaintiff, then accordingly decree of eviction by both the courts below on the ground of non payment of enhanced water charges or taxes was totally illegal.

6. This is a writ petition under Article 227 of the Constitution. Findings of both the courts are against the petitioner and therefore the petitioner can succeed only if he can show that orders of both the courts below are perverse.

7. Counsel for the petitioner pointed out in support of his contention that before filing the present suit, the plaintiff had filed suit being Suit No. 196 of 1964 and that suit was dismissed. Plaintiff preferred an appeal No. 230 of 1965 and in that appeal the plaintiff and the defendant i..e petitioner and the respondent filed consent terms Exhibit 73. It is mentioned therein that both the parties agree for rent of Rs.20/- as standard rent. Therefore, now it was not open to the defendant to contend that Rs.20/- was not the standard rent. If the suit of the plaintiff was dismissed and the plaintiff had filed appeal, then, admittedly the defendant was in a dominating position and he had no reasons to accept Rs.20/- as rent of the premises. If he has done so, then he cannot be permitted to contend that Rs.20/- was not the standard rent. Same view is taken by the trial court in this regard. Another thing to be noted is that the defendant did not file any application for fixation of standard rent within one month of the receipt of the notice.

8. The crucial question is whether the

defendant was bound to pay the permitted increases amounting to Rs.133/-. Both the courts have given finding against the defendant.

9. Counsel for the petitioner repeatedly urged that even if the consent terms are taken as they are, there is no liability upon the defendant to pay the permitted increases. This contention was rightly rejected by the courts below and it is also required to be rejected here also for two reasons. Firstly, the consent terms were executed between the parties and filed in court on 16.9.1965. (This is the date appearing on the certified copy from the record) wherein in paragraph 3 it is agreed between the parties i..e the landlord and the tenant that from 15th day of August 1965 onwards the respondent shall pay Rs.20/- per month as rent of the new tenement. Both agree that Rs.20/- is the standard rent of the new tenement, the Hon’ble court should declare Rs.20/- for new tenement and standard rent at Rs.20/- inclusive of water charges also. Secondly in paragraph 4 also, respondent agreed to pay the electric charges as per the sub meter and also pay the conservancy charges and sanitation charges as per the notice of the Municipality direct

to the Ulhasnagar Municipality.

10. Therefore, it will be clear that the consent terms were filed in 1965. The defendant agreed for standard rent of Rs.20/- and also agreed to pay sanitation charges, electric charges, conservancy charges to the authorities. The demand notice was sent in 1978 i.e. 13 years thereafter and if the defendant has agreed to pay water charges then both the courts below rightly concluded that he was bound to pay permitted increases.

11. In his notice dated 24.11.1978 the plaintiff has stated that defendant is liable to pay permitted increases in respect of taxes, water charges as the taxes have increased by Rs.3/- and water charges by Rs.1.75 paise, he was liable to pay Rs.133/- along with arrears of rent liability, total amounting to Rs.693/-. The Defendant - petitioner gave reply to this notice. So far as water charges are concerned, the defendant in paragraph 3 of his reply contended that monthly rent of Rs.20/- includes water and other charges but the landlord went on collecting the rent but did not pay water bills and did not pay water charges for three years and therefore water

connection was disconnected and the defendant had to pay unpaid bills i.e. water charges to get reconnection at his own cost and the landlord was liable to adjust and settle the water charges. There is therefore no denial by the defendant that he was not liable to pay permitted increases. This settles the issue and nothing remains in the petition. Both the courts below rightly held that the petitioner was liable to be evicted on account of his failure to pay the permitted increases. There is no merit in this petition. The petition is dismissed. Rule is discharged. Time given to the petitioner to vacate the premises on or before 28.2.2007 on condition of his giving usual undertaking to this court within four weeks from today.

(D.G. DESHPANDE, J.)